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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re LEILANI O. et al., Persons Coming Under the Juvenile Court Law.	B291355 (Los Angeles County Super. Ct. No. 18CCJP03111)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Appellant, v. M.B., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Pete R. Navarro, Commissioner. Jurisdictional finding reversed and disposition order vacated.

Jacques Alexander Love, under appointment by the California Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Appellant.

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In this juvenile dependency case, the juvenile court exerted dependency jurisdiction over a 13-year-old and an eight-year-old because their mother returned one positive drug test for marijuana, cocaine and methamphetamine. This was the sole positive drug test and the children were otherwise healthy, "well cared for" and thriving in school, which is why the juvenile court opted for informal supervision rather than court supervision. Mother appeals, arguing that the court should not have exerted jurisdiction in the first place. The child and family services department cross-appeals, arguing that the court should have ordered formal court supervision. We conclude that mother is correct because substantial evidence does not support the court's finding that mother's single drug test placed the children at substantial risk of serious physical harm. This renders the department's cross-appeal moot.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

M.B. (mother) has two daughters, 13-year-old Leilani O. and eight-year-old Madison J. Mother works as a secretary for the Los Angeles Department of Children and Family Services (Department) and moonlights as an event coordinator. Mother raises both daughters on her own in a clean, well-organized and

safe apartment that is stocked with food. Both daughters are "well-groomed and physically healthy"; they show no signs of abuse or neglect. They are doing well in school.

Mother recreationally uses marijuana and drinks alcohol with her friends. However, she does not do so in front of her children or while she is their sole caregiver; neither child has seen mother intoxicated. After a neighbor reported the odor of marijuana coming from mother's apartment, the Department asked mother to undergo a drug test. Mother did, and tested positive for marijuana, cocaine and methamphetamine. Mother anticipated the positive result for marijuana, but offered a variety of alternating reasons why she also tested positive for the other drugs—first she said someone may have laced her drink with those drugs two weeks earlier; then she said her date from the night before may have laced her drink; then she said she finished off a drink into which someone had previously dissolved a pill that may have contained those drugs.

Mother's next drug test came back negative for all drugs and alcohol.

II. Procedural Background

In May 2018, the Department filed a petition asking the juvenile court to exert dependency jurisdiction over Leilani and Madison because mother's "history of substance abuse" and her positive drug test for marijuana, cocaine and methamphetamine "render[ed] [her] unable to provide regular care and supervision of the children," thereby placing them at substantial risk of serious physical harm (and rendering jurisdiction appropriate

under Welfare and Institutions Code section 300, subdivision (b)(1)).[1]

The juvenile court held a combined jurisdictional and disposition hearing in July 2018. The court struck the allegation that mother had a "history of substance abuse," chiefly because persons with "chronic substance abuse" "ordinarily have a disorganized home, dirty home, chaotic lifestyle," but mother's "home was clean, organized and furnished." The court nevertheless found that jurisdiction was appropriate under section 300, subdivision (b)(1) due to mother's marijuana use and single positive drug test for other drugs. The court exhorted mother that drugs "can get away from you," but went on to note that "fortunately, it seems that there's been an intervention before it got away from you" and that the "children are well cared for." With respect to disposition, the court did "not feel that there's [any] need for . . . formal supervision" by the court, so ordered informal supervision under section 360, subdivision (b). More specifically, the court ordered that "services be provided to keep the family together . . . under the supervision of the [Department] for a time period consistent with section 301." The court then dismissed the Department's petition without prejudice.

Mother filed a timely appeal, and the Department filed a timely cross-appeal.

DISCUSSION

In her appeal, mother argues that the court's jurisdictional finding that her drug use placed her daughters at substantial risk of serious physical harm is not supported by the evidence. In

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1 All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

examining the sufficiency of the evidence, we apply the substantial evidence standard that requires us to view the evidence in the light most favorable to the juvenile court's jurisdictional findings. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384; *In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) If the court's jurisdictional finding is defective, the Department's challenge to the ensuing dispositional order placing mother on informal supervision becomes moot. (*In re David M.* (2005) 134 Cal.App.4th 822, 832-833 [so noting], abrogated on other grounds in *In re R.T.* (2017) 3 Cal.5th 622.)

As pertinent to this case, a juvenile court may assert dependency jurisdiction over a child if the "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm . . ., as a result of . . . the inability of [the] parent . . . to provide regular care for the child due to the parent's . . . substance abuse." (§ 300, subd. (b)(1).) To invoke this provision, the Department must prove (1) "substance abuse by a parent . . ., (2) causation, and (3) serious physical harm to the child, or a substantial risk of such harm." (*In re Rebecca C.* (2014) 228 Cal.App.4th 720, 724-725 (*Rebecca C.*).)

Risk to a child from substance abuse can be established either by (1) proof of "'an identified, specific hazard in the child's environment,'" or (2) proof that the child is of "tender years," in which case "the finding of substance abuse is prima facie evidence of the inability of [the] parent . . . to provide regular care resulting in a substantial risk of physical harm." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 766-767 (*Drake M.*).) Because neither of mother's children is "of tender years" (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219 [children "six years old or younger" are considered of tender years]) and because neither

child has suffered any physical harm, the Department was required "to present evidence of a specific, nonspeculative and substantial risk . . . of serious physical harm" arising from mother's drug use. (*In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003 (*Destiny S.*).)

The Department did not carry its burden because the evidence, even viewed in the light most favorable to the juvenile court's finding, does not contain substantial evidence that mother's drug use created a substantial risk of serious physical harm. Because the juvenile court struck the allegation regarding a "history of substance abuse," the *sole* basis for the court's finding is mother's admission to social marijuana use and her single positive drug test for other substances. However, it is well settled that a parent's use of drugs—including "hard drugs" such as methamphetamine and cocaine—"does not [itself] bring a minor within the jurisdiction of the dependency court." (*Destiny S.*, *supra*, 210 Cal.App.4th at p. 1003; *Drake M.*, *supra*, 211 Cal.App.4th at p. 764; *Rebecca C.*, *supra*, 228 Cal.App.4th at p. 728.) What is needed is a link between that drug use and a risk of harm to the children.

Here, that link is missing. The undisputed evidence in the record is that Leilani and Madison are healthy, "well cared for," and thriving. There is no evidence that mother ever used drugs in front of her daughters, was under the influence in front of them, was their sole caregiver while under the influence, or allowed them access to any drug paraphernalia. The neighbor who initially reported mother indicated that he or she "believed" the children were home when mother was using marijuana, but never said they *were*. Mother freely admitted to her regular, recreational use of marijuana away from her daughters, but her

subsequent negative drug test indicates that her use of cocaine and methamphetamine was an outlier. Indeed, the juvenile court commended mother for not letting her use of those harder drugs "get away from her." On facts strikingly similar to those in this case, other cases have rejected dependency jurisdiction: In *Destiny S.*, *supra*, 210 Cal.App.4th at p. 1001, 1004, and *Rebecca C.*, supra, 228 Cal.App.4th at pp. 726-728, the court held that jurisdiction was inappropriate when an 11-year-old child and a 13-year-old child, respectively, were healthy, safe, and thriving despite their mothers' use of various drugs. The same result obtains here.

The Department effectively raises two arguments in response.

First, it invokes section 300.2, which in explaining the purposes animating dependency law, states: "The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child." (§ 300.2.) Contrary to what the Department implies, this provision does not provide that *any* drug use by a parent dictates the exertion of jurisdiction. As *Destiny S.*, *supra*, 210 Cal.App.4th at p. 1005 explained, "the 'negative effects' referenced in section 300.2 must be of the sort likely to result in serious physical harm." Proof of those effects is absent here.

Second, the Department argues that mother's various stories regarding how she ingested the methamphetamine and cocaine indicate that she is "helpless to prevent herself from being drugged" and thus engages in "extremely risky behavior" that puts her daughters at substantial risk of serious physical harm. This echoes the Department's argument to the juvenile

court that mother's explanations "suggest[] . . . [that] something much more nefarious" is "going on here." But whether mother's alternating stories were a lie to cover up her one-time intentional use of those drugs or instead reflect one incident of carelessness is beside the point because her one-time use of those drugs has not translated to a substantial risk of serious physical harm to the children. The Department's suggestion that "something much more nefarious" is "going on" is pure speculation. And its extrapolation that mother's various excuses mean she is regularly engaging in "extremely risky behavior"—absent a link of risk of harm to the children—seems more like an indictment of her lifestyle than anything else. But such judgments about lifestyle are irrelevant because dependency petitions are "brought on behalf of the child, not to punish the parent[]." (*In re La Shonda B.* (1979) 95 Cal.App.3d 593, 599.)

DISPOSITION

The jurisdictional finding is reversed, and the disposition order of informal supervision is vacated.

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_____, J.
HOFFSTADT

We concur:

_____, P.J.
LUI

_____, J.
ASHMANN-GERST